

The Orissa Gazette



EXTRAORDINARY
PUBLISHED BY AUTHORITY

No. 973, CUTTACK SATURDAY, MAY 17, 2008/ BAISAKHA 27, 1930

LABOUR & EMPLOYMENT DEPARTMENT NOTIFICATION The 26th April 2008

No. 5039-1i/1-(BH-I)-11/2004/LE.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the award dated the 11th April, 2008 in I.D. Case No. 5 of 2006 of the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the Industrial Dispute between the Management of M/s. Ispat Alloys Ltd., Balgopalpur, Balasore and their workman Shri Surendra Behera was referred for adjudication is hereby published in the schedule below :—

SCHEDULE

INDUSTRIAL TRIBUNAL : BHUBANESWAR
INDUSTRIAL DISPUTE CASE No. 5 OF 2006
Dated the 11th April 2008.

Present:

Shri Srikanta Nayak, O.S.J.S. (Sr.Branch),
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between:

The Management of
M/s. Ispat Alloys Ltd., Balgopalpur,
Balasore. ... First-Party — Management

(And)

Their workman
 Shri Surendra Behera,
 S/O: Shri Kartik Chandra Behera,
 At/P.O.- Govindpur,
 P.S.- Remuna,
 Dist:- Balasore. ... Second-Party— Workman

Apearances :

Shri P. K. Das,
 Authorised Representative. ...For the First-Party— Management

Shri Surendra Behera ... For the Second-Party— Workman
 himself.

AWARD

The Government of Orissa in the Labour & Employment Department in exercise of the power conferred upon them under sub-section (5) of Section 12 read with clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following dispute for adjudication vide their Order No. 1485- II/1-DH-11/04/LE., dated the 13th February 2006:—

“Whether the termination of services of Shri Surendra Behera, Workman by the Management of M/s. Ispat Alloys Ltd., Balasore with effect from 16th May 2001 is legal and/or justified ? If not, what relief Shri Behera is entitled to ?”

2. This case of the Second-Party (hereinafter referred to as the ‘workman’) is that on 25th April 1995 he joined with the Management as a Trainee. On completion of his traineeship successfully he was appointed as Junior Officer on 1st January 1996 with the basic salary of Rs. 1310/- per month. His salary was increased to Rs. 2490/- per month by 16th May 2001 when his service was terminated without any notice and reason. Though he was appointed as a Junior Officer, he used to maintain the log-book, receive the raw-materials and doing other clerical works. Termination of his service without any notice and without assigning any reason is illegal. So, he raised an Industrial Dispute and after failure of conciliation, the matter as referred to this Tribunal for adjudication.

3. The case of the First- Party (hereinafter referred to as the ‘Management’) is that the workman was appointed as a Junior Officer after completion of his traineeship but he was doing managerial works. So, he is not a ‘Workman’ and consequently the dispute is not maintainable. As the Company faced financial problem it was felt necessary to reduce the man-power. So, the service of the present workman was terminated. The workman was discharging the duty of a Manager and he was the Shift In-charge and taking independent decisions. Since he is not a ‘Workman’, he is not entitled to any relief prayed for.

4. On the aforesaid pleadings of the parties, the following issues have been framed:—

ISSUES

1. “Whether the termination of services of Shri Surendra Behera, workman by the Management of M/s. Ispat Alloys Ltd., Balasore with effect from 16th May 2001 is legal and/or justified ? If not, what relief Shri Behera is entitled to.”
2. “Whether the reference is maintainable”?

5. The workman examined one witness in support of his case and the Management examined five witnesses in support of its case.

Issue Nos. 1 & 2 :—

6. It is not disputed that the workman was appointed as a Trainee and thereafter as a Junior Officer and he was working continuously for more than 240 days. As per the Management the workman was discharging the functions of a manager whereas the workman asserted that he was doing clerical jobs. The burden lies on the Management to prove the nature of job done by the workman. In the decision reported in 2002 (93) FLR (Madras) Page- 226 (Management of Hindustan Motors Ltd. Vrs. Lakshmiah), their Lordships held that “when the appellant took the stand that the nature of the duties performed by the first respondent was of supervisory/administration/managerial in nature, it goes without saying that the burden was upon the appellant to prove that the first respondent was performing the duties as that of supervisory/administration/managerial cadre”.

M. W. No. 1 deposed that the workman was working as a Supervisor and he was the Shift In-charge. He was receiving and despatching raw-materials and looking after the employment of contract labourers and was responsible for shift planning and engagement of other labourers.

M. W. No.2 deposed that the workman was performing supervisory and administrative nature of job and was liable for production of finished products and he used to receive raw-materials and despatch the finished products, handling and planning the man-power, checking the bills of the contractor and issuing gate passes to the subordinates.

M. W. No. 3 also deposed to that effect and further deposed that he as well as the workman were directly related with the Management and used to co-ordinate with the Management. M. W. Nos. 4 and 5 also deposed to that effect. No document is filed by the Management showing the duties performed by the workman.

Ext. 1 reveals that the workman was appointed as a Trainee and Ext.3 is the appointment letter of the workman appointing him as Junior Officer. Clause-5 of Ext.3 reveals that he is to carry-out the duties allotted to him from time to time and Ext.1 Clause-6 (ii) reveals that the workman is to abide by the Certified Standing orders of the company. So, Ext.3 makes it clear that the workman is to carry-out the duties allotted to him from time to time, but no document is filed by the Management to show the nature of duties assigned to the workman. Though Ext.1 reveals that there was a Certified Standing Orders, the Management has failed to produce the same inspite of the direction of the Tribunal and instead of filing the Certified Standing Orders, they have filed the Industrial Employment Standing Orders. So, an adverse inference has to be drawn against it. Ext. 3 clearly negatives the evidence of the Management's witnesses that the workman was taking decisions independently and was in-charge of the Shift. On the other hand, Clause-5 of Ext.3 makes it abundantly clear that the workman is to carry-out the duties allotted to him. Under the circumstances, I am of the view that the Management has failed to discharge the burden in the context.

W. W. No.1 deposed that though he was appointed as a Junior Officer, he used to maintain the log-books of receiving raw-materials, man-power, keeping accounts of the utilization of the same and other clerical works. The fact that he was maintaining the log-

books receives support from the admission of M.W. No.2 in cross-examination. He admitted in cross-examination that the log-book was maintained but asserted that the same is not a clerical work. Under no stretch of imagination it can be said that the maintenance of log-book is a managerial function. M. W. No. 4 admitted in cross-examination that to his knowledge the workman was not exercising any managerial function but functioning as a workman. This admission of M.W. No. 4 strikes at the very bottom of the plea of the Management. As per the evidence of the Management's witnesses and W.W. No.1, the workman was receiving the raw-materials and despatching the production materials. This fact is also admitted in the claim statement filed by the workman.

7. Section 2 (S) of the Industrial Disputes Act defines 'Workman' as Follows:—

" Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment by express, implied and for the purposes of any proceeding under this Act in relation to an Industrial Dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of that dispute, or whose dismissal, discharge or retrenchment has led that dispute, but does not include any such person :—

- (i) who is subject to the Air Force Act, 1950 or the Army Act, 1950, or the Navy Act, 1957; or
- (ii) who is employed in the police service or as an officer or employee or a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a Managerial nature".

In the decision reported in (2002) 4 Supreme Court Cases 490 (Sharad Kumar Vrs. Government of NCT of Delhi and others), their Lordships held that "in order to come within the meaning of the expression "workman" in Section 2(S), ID Act, the person has to be

discharging any one of the types of the works enumerated in the first portion of the section. If the person does not come within the first portion of the section then it is not necessary to consider the further question whether he comes within any of the classes of workman excluded under the latter part of the section. The question whether the person concerned comes within the first part of the section depends upon the nature of duties assigned to him and/or discharged by him. The duties of the employee may be spelt out in the service rules or regulations or standing orders or the appointment order or in any other material in which the duties assigned to him may be found. When the employee is assigned a particular type of duty and has been discharging the same till date of the dispute then there may not be any difficulty in coming to a conclusion whether he is a workman. If on the other hand the nature of duties discharged by the employee is multifarious then the further question that may arise for consideration is which of them is his principal duty and which are the ancillary duties performed by him". In another decision reported in (2001) 7 Supreme Court Cases 394 (Hussain Mithu Mhasvadkar Vrs. Bombay Iron & Steel Labour Board & another), their Lordships held that "in deciding about the status of an employee, his designation alone is not decisive and what really should go into consideration is the nature of his duties and the powers conferred upon, as well as the functions assigned to him".

A perusal of the decision of the Hon'ble supreme court makes it clear that the name of the post is not sufficient to establish the nature of job done by an employee. Receiving raw-materials and despatching the finished products and his involvement in the production of the factory cannot be said to be a managerial function. So, the Second-Party is a 'workman' and he was not discharging any managerial duties.

8. Admittedly, no notice was given to the workman while terminating his service nor he was paid any compensation nor any proceeding was drawn-up against him. Clause :-9 of Ext.3, the appointment letter, reveals that the service of an employee can be terminated by issuing one month's notice or paying one month's salary. This is also required under the Industrial Disputes Act but the Management has not followed it. So, the termination of service of the workman is illegal one.

9. Coming to the question of back wages, the workman has not uttered a single word nor adduced any reliable evidence that he was not gainfully employed elsewhere. So, he is not entitled to any back wages.

10. In view of my discussions made above, the reference is answered as below :—

The termination of services of the workman Shri Surendra Behera by the Management with effect from 16th May 2001 is neither legal nor justified. He is held entitled to reinstatement in service, but without any back wages.

Dictated and corrected by me.

Shri Srikanta Nayak
11-04-2008
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Shri Srikanta Nayak
11-04-2008
Presiding Officer,
Industrial Tribunal
Bhubaneswar.

By order of the Governor

G. N. JENA
Deputy Secretary to Government